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December 22, 2014

Hon. Christian F. Hummel  
James T. Foley United States Courthouse  
445 Broadway, Room 441  
Albany, New York 12207-2936

**RE: Applied Materials, Inc. v. Terry Burks**  
**Civil Action No.: 1:14-cv-01346 (GTS/CFH)**

Dear Judge Hummel:

We are the attorneys for Non-Party Chad Fichtner. We are writing to request a conference to discuss non-party subpoenas served upon Mr. Fichtner in advance of formal motion practice to quash these subpoenas.

Mr. Fichtner was served with two subpoenas purporting to require him to produce documents and attend a deposition in the above referenced matter. Documentation is required to be produced by December 30, 2014 and his testimony is demanded for January 5, 2015 at 9:00AM. Compliance has been sought within the Northern District of New York. Attached herewith are copies of the subpoenas.

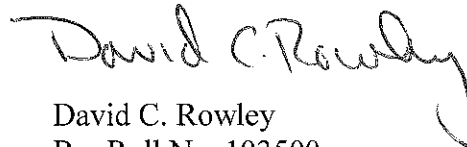
The subpoenas have been issued prior to the Court's initial conference in this case, which is currently scheduled for February 3, 2015, and before the parties have conferred pursuant to Rule 26(f). As the Court is aware, Rule 26(d)(1) prohibits discovery "from any source" prior to the parties' Rule 26(f) conference. The subpoenas issued to Mr. Fichtner have therefore been served prematurely and should be quashed. While it appears there has been certain limited discovery in this case with the permission of the Court, the subpoenas issued to Mr. Fichtner appear to be completely unrelated to this limited discovery which was previously permitted by the Court.

We have forwarded this letter to Counsel for the Plaintiff, together with a letter objecting to the timing and contents of the subpoenas today and have requested the withdrawal of the subpoenas. It is my understanding that counsel for non-party Westerwood Global USA, LLC has also raised issue with non-party subpoenas which have been issued to its representatives by the Plaintiff.

In light of the impending compliance dates, and the upcoming holiday schedule which may pose problems with scheduling, we are writing now to request a conference to discuss these matters. We appreciate the Court's consideration of our request and are available at the Court's convenience should the Court be willing to discuss this matter with counsel.

Respectfully submitted,

COOPER ERVING & SAVAGE LLP

A handwritten signature in black ink, reading "David C. Rowley". The signature is written in a cursive, flowing style. The first name "David" is written in a larger, more prominent script, followed by "C." and "Rowley". The signature ends with a large, sweeping flourish that extends downwards and to the right.

David C. Rowley  
Bar Roll No. 103500

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